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PAGE 01 STATE 024584

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TO AMEMBASSY BERLIN

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TAGS: CGEN, CASC, VE, US

SUBJECT: CONSULAR CONVENTION NEGOTIATIONS WITH GDR

REF: BERLIN 178, BERLIN 314, BERLIN 317

SUMMARY: THERE FOLLOWS AN ARTICLE BY ARTICLE COMMENT ON
PROVISIONS IN GDR DRAFT CONSULAR CONVENTION.

ONLY MORE SIGNIFICANT PROBLEMS ARE SUMMARIZED
AND NATIONALITY ISSUE WHICH IS DISCUSSED IN
DEPARTMENT STUDY ALREADY POUCHED BERLIN IS NOT
INCLUDED. SUMMARY IS PRELIMINARY WORKING STUDY
WITHIN DEPARTMENT. EMBASSY'S COMMENTS ARE
WELCOME.

1.) GDR PROTOCOL TO THE CONSULAR CONVENTION GIVES A
PERIOD OF FIVE DAYS AFTER ARREST TO PROVIDE INFORMATION TO
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PAGE 02 STATE 024584

CONSULAR OFFICER AND 8 TO 10 DAYS BEFORE GRANTING VISITA-

TION. THESE PERIODS ARE TOO LONG, WE WOULD PREFER THE WORDS "WITHOUT DELAY", IF MORE FAVORABLE PERIODS -- PREFERABLY 2 DAYS NOTIFICATION AND 4 DAYS FOR VISITATION -- CAN NOT BE WORKED OUT.

2.) STUDY REQUESTED IN EMBTEL 317, AND MOST MATERIALS MENTIONED EMBTEL 314 HAVE BEEN POUCHED. WE DO NOT HAVE COPIES OF FRG CONSULAR CONVENTIONS. IF EMBASSY BONN CAN OBTAIN THESE, IT WOULD BE APPRECIATED IF THEY COULD BE SENT TO BERLIN.

ARTICLE 1

(A) SUBPARA 4 REFERS TO PERSONS ASSIGNED TO A CONSULATE "FOR A PRACTICAL COURSE" AS INCLUDED WITHIN THE CATEGORY OF "CONSULAR OFFICER." THE US HAS NO SUCH CATEGORY OF CONSULAR PERSONNEL AND, THUS, THIS ADDED REFERENCE SHOULD BE DELETED.

(B) SUBPARA 5 SHOULD REFER TO "SERVICE AND OTHER" WITH RESPECT TO FUNCTIONS PERFORMED BY MEMBERS OF THE CONSULATE STAFF, OTHER THAN ADMINISTRATIVE AND TECHNICAL PERSONNEL.

(C) THE PHRASE "SUPPORTED BY HIM (A MEMBER OF A CONSULATE)" AS IT APPLIES TO FAMILY MEMBERS MAY BE DIFFICULT TO INTERPRET AND APPLY UNDER VARIOUS CIRCUMSTANCES.

(D) THE DEFINITION OF "VESSEL OF THE SENDING STATE" SHOULD SPECIFICALLY EXCLUDE WARSHIPS. (N.B.: THE US DRAFT, AS PRESENTED TO THE GDR, CONTAINS A SERIOUS TYPO, WITH THE WORD "INCLUDING" APPEARING IN PLACE OF "EXCLUDING".)

(E) THE DEFINITIONS OF "CITIZEN" AND "JURIDICAL PERSON" ARE INAPPROPRIATE AND UNACCEPTABLE IN CONTENT. THIS PROBLEM IS STILL UNDER CONSIDERATION.

ARTICLE 2

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PAGE 03 STATE 024584

IT IS INADVISABLE TO REQUIRE SPECIFIC AGREEMENT BETWEEN THE SENDING AND RECEIVING STATES ON THE NUMBER OF MEMBERS OF A CONSULATE IN VIEW OF THE CHANGES WHICH MAY BE REQUIRED FROM TIME TO TIME. FOR THIS REASON, THE US FORMULATION CONTAINED IN ARTICLE 5(1) IS PREFERABLE.

ARTICLE 4

SUBPARA 3 SHOULD STATE THAT DIPLOMATIC PRIVILEGES
AND IMMUNITIES ARE RETAINED BY DIPLOMATIC OFFICER

PERFORMING THIS FUNCTION EXCEPT WITH RESPECT TO MATTERS
CONNECTED WITH THE ADMINISTRATION OF ESTATES.

ARTICLE 5

THE SENDING STATE SHOULD BE REQUIRED TO COMMUNICATE
INFORMATION ON THE FUNCTIONS OF CONSULAR OFFICERS AND
SHOULD BE REQUIRED TO PROVIDE INFORMATION ON THE NATION-
ALITY, CHANGES IN STATUS AND FUNCTIONS ON ALL CONSULAR
PERSONNEL, INCLUDING SEPARATE DATA ON LOCAL EMPLOYEES.

ARTICLE 6

THE GDR FORMULATION DOES NOT ADEQUATELY DEAL WITH
THE PROBLEM OF DUAL NATIONALS AND THE WORD "RESIDING" IS
DIFFICULT TO INTERPRET.

ARTICLE 8

THIS ARTICLE SHOULD REFER TO "RIGHTS" AS WELL.

ARTICLE 11

(A) THE RECEIVING STATE'S OBLIGATION SHOULD BE
EXPRESSED IN TERMS OF TAKING "ALL APPROPRIATE MEASURES."

(B) A PERSON DESIGNATED BY THE HEAD OF CONSULATE OR
HEAD OF DIPLOMATIC MISSION SHOULD HAVE THE AUTHORITY TO
AUTHORIZE ENTRY INTO CONSULAR PREMISES AND RESIDENCES.
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PAGE 04 STATE 024584

ARTICLE 13

(A) THE GDR DRAFT OMITTS ANY REFERENCE TO THE SITUA-
TION IN WHICH RECEIVING STATE AUTHORITIES HAVE SERIOUS
REASON TO BELIEVE THAT THE CONSULAR POUCH CONTAINS PRO-
HIBITED ITEMS. THE US SIDE SHOULD CONSIDER THE MERITS
AND DEMERITS OF INCLUDING SOME LANGUAGE ALONG THESE LINES.

(B) THE GDR TREATMENT OF "AD HOC COURIERS" IS
MURKY. THE US FORMULATION CONTAINED IN ARTICLE 14(6) IS
PREFERABLE.

(C) RE PARA (4) OF THE GDR DRAFT, THERE IS INSUFFI-
CIENT EXPLANATION AS TO THE MEANING OF THE PHRASE "WITH

DUE OBSERVANCE OF RELEVANT SECURITY REGULATIONS."

ARTICLE 16

THE US SIDE SHOULD CONSIDER THE WISDOM OF EXEMPTING ALL CONSULAR EMPLOYEES FROM COERCIVE MEASURES IN THE EVENT OF FAILURE TO COMPLY WITH A REQUEST FOR TESTIMONY.

ARTICLE 19

WE SHOULD ASK FOR A SIMILAR EXEMPTION FROM WORK PERMIT REQUIREMENTS AS FORSEEN IN ARTICLE 47 OF THE VIENNA CONVENTION.

ARTICLE 22

CONSIDERATION SHOULD BE GIVEN TO THE LEGITIMACY OF EXEMPTIONS FOR EXPORATION OF OFFICIAL AND PERSONAL ITEMS AND THE IMPACT OF US CUSTOMS REGULATIONS ON THIS MATTER. (N.B.: WE ARE EXAMING POSSIBILITY OF FULL CUSTOMS EXEMPTIONS.)

NOTE: GDR DRAFT CONTAINS NO PROVISION ON IMMUNITY OF CONSULAR PREMISES AND VEHICLES FROM REQUISITION. (SEE US DRAFT ARTICLE 25.)

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PAGE 05 STATE 024584

ARTICLE 27

(A) MEANING OF "WITHOUT REQUIRING SPECIAL AUTHORIZATION" IN LINES 2 AND 3 IS UNCLEAR.

(B) THE TYPE OF CAVEAT CONTAINED IN US 32(3) ON ACTING AS AN ATTORNEY-AT-LAW IS ESSENTIAL.

ARTICLE 29

(A) GDR PROVISIONS ON PERFORMING MARRIAGES AND CARRYING OUT ADOPTIONS ARE INADVISABLE, BUT COULD BE ACCEPTED AS TRADE-OFFS ON OTHER MORE IMPORTANT ISSUES.

(B) IF SUCH FUNCTIONS ARE AUTHORIZED, IT SHOULD BE MADE CLEAR THAT(1) SENDING STATE CONSULAR OFFICERS ARE NEITHER ENTITLED NOR REQUIRED TO PERFORM SERVICES FOR WHICH THEY HAVE NO SENDING STATE AUTHORIZATION AND THAT, WHETHER OR NOT THERE IS SENDING STATE AUTHORIZATION, THE INDIVIDUALS RECEIVING THE SERVICES ARE NOT RELIEVED FROM THE RELEVANT OBLIGATIONS OF THE RECEIVING STATE.

ARTICLE 31

THIS ARTICLE SHOULD REFER TO THE LEGAL VALIDITY OF ACTS AND DOCUMENTS IN THE STATES IN WHICH THEY ARE DESIGNED TO TAKE EFFECT AND SHOULD PROVIDE THAT THEY MAY NOT VIOLATE LAWS AND REGULATIONS OF THE RECEIVING STATE.

ARTICLE 33

(A) A CONSULAR OFFICER SHOULD HAVE NO OBLIGATION TO INFORM RECEIVING STATE AUTHORITIES OF INFORMATION WHICH HE HAS RECEIVED CONCERNING ESTATES OF SENDING STATE NATIONALS OR IN WHICH THEY MAY HAVE AN INTEREST. SUCH AN OBLIGATION WOULD SERVE TO DILUTE THE RECEIVING STATE'S OBLIGATION IN THIS REGARD.

(B) US SIDE SHOULD AVOID REQUIREMENT THAT A DEATH CERTIFICATE BE PROVIDED A CONSULAR OFFICER FREE OF CHARGE, ALTHOUGH THIS OBLIGATION COULD BE ACCEPTED AS A TRADE-OFF. LIMITED OFFICIAL USE

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(C) THE GDR DRAFT OMITTS THE IMPORTANT REFERENCE TO COMPLIANCE WITH THE LAW OF THE RECEIVING STATE IN EXECUTING ESTATES FUNCTIONS.

ARTICLE 35

WE SHOULD CHANGE OUR LANGUAGE TO PROVIDE FOR "IMMEDIATE" NOTIFICATION OF ARREST AND RIGHT TO VISIT DETAINED NATIONALS "WITHOUT DELAY".

ARTICLE 36

THE US DRAFT IS FAR MORE COMPREHENSIVE AND IN TOUCH WITH REAL US NEEDS. IT SHOULD BE STRONGLY PUSHED.

ARTICLE 41

THIS PROVISION SHOULD BE SUBJECT TO TREATY PROVISIONS IN FORCE.

ARTICLE 42

PERFORMANCE OF THESE FUNCTIONS SHOULD BE SUBJECT TO "NO OBJECTION" BY THE RECEIVING STATE. KISSINGER

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